

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TRACEY WHITE, et al.)	
)	
Plaintiffs,)	
)	
v.)	
)	
THOMAS JACKSON, et al.,)	No. 4:14-cv-01490-HEA
)	
Defendants.)	

***DEFENDANTS' CITY OF FERGUSON, POLICE CHIEF
THOMAS JACKSON AND POLICE OFFICER JUSTIN
COSMA'S JOINT MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT (DOC. NO. 41)***

COME NOW Defendants, the City of Ferguson, Police Chief Thomas Jackson and Police Officer Justin Cosma, and for their Joint Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), state:

1. On August 28, 2014, Plaintiffs Tracey White, Dwayne Anton Matthews, Jr., Damon Coleman, Theophilus Green, and Kerry White filed their Complaint against Defendants Thomas Jackson, Jon Belmar, Justin Cosma, John Does, St. Louis County, Missouri, and the City of Ferguson, Missouri.
2. On October 2, Plaintiffs filed an Amended Complaint adding Antwan Harris, Nathan Burns, Kia Bowers, and Sandy Bowers as Plaintiffs.
3. On December 1 and 2, 2014, Plaintiffs filed their Second Amended Complaints. Doc No. 38 and 41.

4. Each Plaintiff attempts to state a claim under Missouri law regarding “negligent supervision” against the City of Ferguson and St. Louis County.
5. Plaintiffs have not pleaded any exception (except procurement of insurance, which was pleaded inadequately) to Missouri’s Sovereign Immunity Statute (R.S.Mo. § 537.600) and the City of Ferguson should be dismissed on the basis of the doctrine of sovereign immunity. *See, e.g., Doe A v. Special School Dist. of St. Louis County*, 637 F.Supp. 1138, 1149 (E.D. Mo. 1986); *Aiello v. St. Louis Community College Dist.*, 830 S.W.2d 556, 559 (Mo. App. E.D. 1992) (barring negligent supervision claim based on application of doctrine sovereign immunity); *Dowell v. Lincoln County*, 927 F.Supp.2d 741 (E.D. Mo. 2013) (barring negligent hiring and training claim based on application of sovereign immunity).
6. Plaintiffs’ allegation that the City of Ferguson and Chief Thomas Jackson (in his official capacity) are vicariously liable for the actions of any City of Ferguson police officer likewise should be dismissed, as 42 U.S.C. § 1983 does not recognize a cause of action under vicarious liability or respondeat superior. *Andrews v. Fowler*, 98 F.3d 1069, 1074–75 (8th Cir. 1996) (*quoting Monell v. Dep’t of Social Servs. of the City of New York*, 436 U.S. 658, 694 (1978)); *see also Giustiniano v. Village of Calverton Park, Mo.*, 2008 WL 5110576, 2 (E.D. Mo. 2008).
7. Plaintiffs’ allegations regarding U.S. citizens should be dismissed due to the public duty doctrine, and failure to state a claim (failure to specify a plaintiff). *See Southers v. City of Farmington*, 263 S.W.3d 603, 612 (Mo. banc 2008).

8. Defendants join in the arguments raised in St. Louis County and Chief Jon Belmar's Motion to Dismiss Plaintiffs' Second Amended Complaint, and requests relief similarly granted to St. Louis County and Chief Jon Belmar.

WHEREFORE, Defendants City of Ferguson, Police Chief Thomas Jackson, and Ferguson Police Officer Cosma respectfully pray that this Court dismiss Plaintiffs' claims regarding negligent supervision, as Plaintiffs' Second Amended Complaint regarding negligent supervision fails to state a claim upon which relief may be granted, and for such further relief as this Court deems just and proper.

/s/Peter J. Dunne

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 15th day of December, 2014, to be served by operation of the Court's electronic filing system upon the following:

- Gregory L. Lattimer, Attorney for Plaintiffs, 1200 G. Street, N.W., Suite 800, Washington, D.C. 20005, lattlaw@aol.com;
- Malik Z. Shabazz, Attorney for Plaintiffs, 1200 G. Street, N.W., Suite 800, Washington, D.C. 20005, attorneyshabazz@yahoo.com;
- Reginald A. Green, Attorney for Plaintiffs, One Georgia Center, Suite 605, 600 West Peachtree Street, N.W., Atlanta, Georgia 30308, rgreene@greenelegalgroup.com; and
- Michael E. Hughes, Attorney for Defendants St. Louis County and Chief Jon Belmar, 41 S. Central Ave, Clayton MO 63105.

/s/ Peter J. Dunne

December 15, 2014